

None is Still Too Many: An Historical Exploration of Canadian Immigration Legislation As It Pertains to People with Disabilities.

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This paper explores the development of Canadian immigration legislation from the mid-Nineteenth Century to the present day. The aim is to show, through an historical lens, how people with disabilities have been and continue to be treated as inferior to nondisabled people when it comes to immigration. Similar to other minority populations, including people of colour, gays, lesbians, as well as people from ethnically and culturally diverse communities, people with disabilities have been assigned to the prohibited and inadmissible classes of various immigration acts. While significant legislative changes have been instituted to address immigration policies which were once racist, sexist, and/or homophobic, no similar changes have been made to address ableist immigration legislation. As a result, Canadian immigration legislation continues to deny or restrict immigration opportunities for people with disabilities, as case studies will attest. By developing this history, it is hoped that readers will address important questions about the ethics of the continued discrimination against potential immigrants with disabilities and the ethics of decision-making processes which devalue the lives of people with disabilities.

Introduction

In recent years, numerous media reports as well as reports from advocacy groups, such as the Council of Canadians with Disabilities, reveal that people with disabilities and their family members are being denied permission to immigrate to Canada. "Canadians with disabilities

realize that if they had not been born here they could never become a Canadian for the simple reason that they have a disability" (<http://www.ccdonline.ca/en/socialpolicy/access-inclusion/hawking>).

For example, in the summer of 2008, the Chapman family from Britain was denied permission to remain in Canada when it was discovered the seven-year-old daughter had a developmental disability. And, in recent years, immigrant families such as the Dejong family from the Netherlands and the Hilewitz family from South Africa challenged deportation in the Supreme Court of Canada. In both families there was a child with an intellectual impairment. These are heart wrenching stories, as subsequent discussion will demonstrate, and one has to ask about the ethics of decision-making when it comes to determining who is and who is not granted permission to immigrate to Canada.

The title of the paper is borrowed from the text, *None is Too Many: Canada and the Jews of Europe 1933-1948* (Abella & Tropper, 1984). During the rise of Nazism in Europe, tens of thousands of Jews applied to come to Canada but most were denied permission to emigrate. When asked about the number of Jews that should be permitted into Canada, the Deputy Minister of Immigration, Frederick Blair, is reported to have stated, "None is too many" (Abella & Tropper, 1984). As far as immigration legislation and people with disabilities is concerned, little has changed since the late 19th Century and, although not officially stated, the concept of "none is too many" still applies to people with disabilities attempting to immigrate to Canada.

The historical record indicates that Canada's immigration history is steeped in anti-Semitism, racism, homophobia and sexism but, over the years, reforms to immigration legislation have led to the removal of barriers to individuals and groups who were once denied entry. Since the end of the Second World War, there has been a liberalization of immigration legislation wherein ethical decision-making has made it unacceptable to discriminate against individuals because of their race, religion, ethnicity, culture, gender or sexual orientation. As a result of these reforms, Canada has become home to previously unwanted populations including European Jews, Roma people, gays and lesbians, people from the Middle East, Asia, Africa, the Caribbean, as well as

South America and Central America. Simply put, it is not only considered unethical but it is unacceptable to deny entry to immigrants because of the colour of their skin, religious beliefs, sexual orientation or their culture.

While discriminatory immigration policies and practices have been removed for most populations, the historical record indicates that discriminatory legislation still exists for disabled immigrants and their families. An historical review of immigration legislation indicates that, while significant reforms have led to the accommodation, admission and acceptance of immigrants from around the world, no similar legislative reforms have been made to accommodate, admit or accept immigrants with disabilities. In short, reforms to immigration legislation have put an end to policies and practices stemming from racist, sexist and heterosexist ideals but no similar reforms have been initiated which would put an end to policies and practices rooted in ableist ideals.

From an ethical standpoint, it is difficult to justify the continuation of discriminatory decision-making toward immigrants with disabilities. In recent decades, provincial, territorial, and federal legislation, which has been developed to end discrimination based on race, gender, religion, ethnicity and sexual orientation, has always gone hand-in-hand with legislation to end discrimination toward people with disabilities. All provincial, territorial, as well as federal human rights legislation states that no one can be discriminated against because of his/her race, ethnicity, religion, gender, sexual orientation, or disability. In short, when it comes to the federal and provincial laws which address discrimination, every individual or group is treated equally and no form of discrimination is given greater credibility than the next. Unfortunately, as this paper shows, these rules don't apply to people with disabilities when they attempt to immigrate to Canada.

Policies and practices which restrict or eliminate immigration opportunities for people with disabilities raise some interesting and important ethical debates. For example, there is the issue of human rights legislation and the manner in which immigration policies get around this legislation. In addition, there is a record of legislative reform

which has recognized that discriminatory practices regarding immigration are unjust and unethical. Moreover, there is evidence to suggest that, as far as immigration legislation is concerned, “ableism” does not have the same credibility as other forms of discrimination, including racism, sexism or homophobia.

The intent of this paper is not to spend a vast amount of time debating the ethics of legislation which denies admission to people with disabilities but, instead, it is hoped that by reading this paper people will come to their own conclusions about ethical decision-making and ethical policy development. To achieve this objective, the paper presents an historical chronology of immigration policy development showing that reforms which ended discriminatory practices toward many groups have not been applied to people with disabilities.

It is interesting to note that no other population, except criminals, subversives and the like, has their immigration status influenced and determined by laws which can be traced back to the mid-Nineteenth Century. Canadians would not accept immigration legislation affecting people of colour, gays, lesbians, single women or religious groups if this legislation was based on Nineteenth Century laws. One could imagine the uproar from most quarters. But there is no uproar, no protest, and no campaign from the general populace when it comes to the immigration of people with disabilities.

The paper commences with an examination of Canada’s first immigration legislation, which was developed in 1869, and it ends with an examination of the Immigrant and Refugee Protection Act of 2001. By examining Canadian immigration legislation through an historical lens, the development of immigration legislation can be traced over time. Discoveries can be made as to the long-term consequences of policy development and comparisons can be made regarding the impact of legislative changes for different populations. For example, the historical record shows that post World War Two reforms, especially reforms made during the 1960s, led to the opening of Canadian borders for many different populations. But, by juxtaposing these reforms against immigration legislation pertaining to people with disabilities, one can

see that it has become more difficult for immigrants with disabilities to become citizens.

While it can be argued that Canadian immigration law does not categorically state that people with disabilities need not apply, contemporary immigration policy, as depicted in the Excessive Demand Clause and the Inadmissible Category, does make it extremely difficult for people with disabilities to become citizens. It is the historical examination of the excessive demand clause as well as similar clauses referring to the Inadmissible and the Prohibited Classes which make up the bulk of this paper. Hopefully the paper, which is based on the examination of primary legislative documents, will raise as many questions as it answers regarding ethical decision-making and policy reform. The questions the reader should come to terms with in this paper: Is it ethical to deny citizenship to people with disabilities based on policies which were created over 140 years ago? Is it ethical to institute human rights reforms to immigration legislation yet leave people with disabilities uncovered? Is it ethical for policy makers to create legislation which puts undue hardships on families and loved ones because someone in the family is disabled? Is it ethical to make decisions about the value of individuals based solely on their level of impairment?

When responding to the questions posed in this paper, it is important to keep in mind that the paper is written in the context of an understanding of reasonable accommodation. The author realizes that it is reasonable to have criteria for immigration selection, especially criteria relating to public health and safety, but it is unreasonable to paint all potential disabled immigrants with the same brush and cast them as inadmissible. If immigrants with disabilities meet the same criteria as other immigrants in areas of language, family unification, education and training or job possibilities, then these immigrants should be shown the same consideration as all others.

1869: An Act Respecting Immigrants and Immigration

The pre-confederation provinces of British North America developed legislation pertaining to immigration and similar legislation was adapted

following Confederation in 1867, but it is important to note that neither the federal government of Canada nor its provinces had final control over immigration and citizenship until the post-World War Two era. The historical record indicates that immigration to Canada was controlled by Britain and this was not changed until January 1, 1947, when the Act Respecting Citizenship, Nationality, Naturalization and the Status of Aliens became law (Acts of the Parliament of the Dominion of Canada, Chapter 54, 1946). Hence, it can be argued that, until January 1, 1947, all immigrants coming to Canada were British subjects.

Canada's first immigration act came into existence in 1869 and, among other things, *An Act Respecting Immigrants and Immigration* established protocols regarding the immigration of people with disabilities or, in the vernacular of the era, "the defective class." People relegated to the defective class included "the deaf and dumb, the blind, the lunatic, the idiotic and the infirmed" (Statutes of Canada, 1869, Ch. 10, p. 36-37). Interestingly, this first federal legislation did not diverge significantly from provincial and colonial legislation such as the Immigration Act of Upper Canada (Ontario) and Lower Canada (Quebec) of 1848, which provided the Chief Officer or Collector of the Port (Montreal and Quebec City) with the responsibility to identify and designate "all such passengers as shall be lunatic, idiotic, deaf and dumb, blind or infirm, stating also whether they are accompanied by relatives likely to be able to support them" (Provincial Statutes of Canada, 1848, Vol. III, p. 6). The legislation further suggested that, if "there shall be found among such passengers on board "...lunatic, idiotic, deaf and dumb, blind or infirm person... if in the opinion of the Medical Superintendent, be likely to become permanently a public charge, the said Medical Superintendent shall forthwith report the same officially to the Collector of the Chief Officer of the Customs..." (p. 6).

The Immigration Act of 1848 stated that the Medical Superintendent of port towns such as Montreal and Quebec City had the responsibility to determine who was fit enough to enter Canada. Medical Superintendents had the responsibility to investigate and determine which defectives were able to provide for themselves or could be supported by family members. In brief, the primary responsibility of the

Medical Superintendent was to determine which passengers might become dependent on charitable relief; which passengers because of "lunacy" posed a threat to the populace, and which passengers because of contagious disease, posed a threat to the health of the general populace. These responsibilities remained part of the Medical Superintendent's mandate throughout the 19th Century and, when immigration responsibilities were turned over to the federal government, these responsibilities were instituted as part of Canada's first immigration act of 1869 (Statutes of Canada, 1869).

It is no coincidence that many aspects of Canada's immigration legislation grew out of quarantine and public health laws as there was a legitimate fear of contracting contagious diseases such as Cholera and Tuberculosis (Statutes of Canada, 1866). At the time there were no known cures for these contagious diseases and cholera claimed as many as 20,000 lives in Canada during epidemics of the late Nineteenth and early Twentieth Centuries (Boyd & Vickers, 2000). Except for contagious people or people suspected of being contagious, "there were few other restrictions on those who could come to Canada initially" (Canada In the Making, p. 2).

While early immigration legislation attempted to separate the "disabled from the nondisabled" as well as the sick from the healthy, the legislation did not categorically state that physical and mental defectives would be denied entry into Canada. On the contrary, the legislation merely stated that defectives had to be recorded when their ship docked and, once the individual was recorded, there appear to have been a number of options which were used to determine suitability for entry. Options ranged from straight forward admission, to quarantine, to outright denial of entry wherein disabled individuals were returned to their country of origin at the earliest opportunity (Statutes of Canada, 1869).

As noted above, beside public health and public safety concerns, another major concern in determining eligibility for entry into Canada had to do with social dependence. Canada's Immigration Act of 1869 made it quite clear that immigrants who might be dependent on charitable relief were not welcome. Notwithstanding these legislative principles, allowances

were made for social dependents. For example, this immigration act stated that the ship's owners could be held financially liable for the care and maintenance of "dependent passengers" and the company would have to pay a bond of \$300.00 for each such passenger. The money could be used by the municipality, county, charitable institution or province, to provide for the care and support of the individual for up to three years (Statutes of Canada, 1869). Under the Immigration Act, immigrants were expected to provide documentation indicating medical clearance before their voyage to Canada. If the ship's crew did not review the documents and, as a result, physical, mental and or other impairments went undetected until arrival in Canada, the transporting company would be held financially responsible for the care and maintenance of these individuals. However, if it was determined that the individual acquired his/her impairment during the voyage or if it was determined that a diagnosis was not made before the voyage began, then no bond was charged to the ship's owners or the captain (Statutes of Canada, 1869).

...the Collector of Customs may dispense with such bond or money if it appears by the certificate of the Medical Superintendent that the Passenger with respect to whom such a bond or money is required has become lunatic, idiotic, deaf and dumb, blind or infirm from some cause not existing or discernable at the time of departure. (p. 37)

The Immigration Act of 1869 is important for the examination of disability history in Canada as this Act was Canada's first federal legislation which established parameters for determining who could and could not be admitted into the country. The Immigration Act established concerns pertaining to public safety as well as communicable disease, and the Act also established constraints regarding "excessive demand" in reference to social dependence if "...such a person is, in the opinion of the Medical Superintendent, likely to become permanently a public charge" (p. 36). But this first federal immigration act did not categorically deny entry to people with disabilities. Indeed, the Act was primarily concerned with public safety, public health and social dependence; therefore, if a disabled individual did not present a concern

in these areas it was quite likely that the individual was granted permission to enter Canada. For example, if it was determined that disabled persons would be cared for by family members or if they were travelling with family members, such individuals would be admitted. Similarly, if disabled individuals could substantiate that they had a job or had family members already living in Canada, then the likelihood of gaining permission to immigrate was quite good. Briefly stated, as far as people with disabilities were concerned, the earliest of immigration acts established criteria to restrict this population's opportunities to immigrate and, while restrictions existed, there were also many government sanctioned mechanisms to over-ride the restrictions. Excessive demand in some form has been part of Canadian immigration legislation since 1869 but the evidence suggests that it may have been easier for people with disabilities to enter Canada in years past than under present immigration legislation. In many ways, disabled immigrants were not treated much differently than nondisabled immigrants. As long as disabled individuals could provide for themselves and/or their families, or if the individual needed care and the family was willing to provide for the individual, then the person was granted permission to enter Canada.

1906: An Act Respecting Immigrants and Immigration

Almost forty years passed before Canada's immigration act was amended. It is evident that there was little difference between the 1869 Act and the 1906 Act, but the Act did expand the category of "defectives" who might not be allowed entry into Canada. For example, Section 26 of the Act stated the following:

No immigrant shall be permitted to land in Canada,
who is feeble-minded,
an idiot, or an epileptic, or who is insane, or has had an
attack of insanity
within five years; nor shall any immigrant be so landed
who is deaf and dumb,

or dumb, or blind or infirm, unless he belongs to a family who accompany him
or are already in Canada and who give security, satisfactory to the Minister,
and in conformity with the regulations in that behalf, if any, for his permanent
support if admitted into Canada. (Statutes of Canada, Section 26, July 1906, p. 1741)

As noted in the above description, the Immigration Act of 1906, like the Immigration Act of 1869, did not automatically deny entry to people with disabilities. Similar to the 1869 Immigration Act, the concern for potential reliance on public relief remained a central element of the 1906 Immigration Act. It is evident that the Act did provide an opportunity for some disabled populations to land and remain in Canada as long as there was a family member who could provide for the disabled individual or individuals could provide for themselves. And the 1906 Immigration Act allowed for the reunification of families of people with disabilities as long as the family members who were in Canada guaranteed they would cover the costs of any required supports (Statutes of Canada, July 1906).

Although there were many similarities between the Immigration Act of 1906 and the Immigration Act of 1869, an important change is noted in the 1906 Act and this had to do with the very definition of immigrant. The 1906 Immigration Act, for example, offered the following definition for immigrant.

Immigrant means and includes any steerage passenger or any "work-a-way" on any vessel whether or not entered as a member of the crew after the vessel has sailed from its first or last port of departure, any saloon passenger or second class passenger or person having been a member of the crew who has ceased to be such who upon inspection is found to come within any class liable for exclusion from Canada. (p. 1709)

The definition of immigrant in the 1906 Immigration Act makes an important distinction between passengers based on their economic and social status. For example, the Act indicated that all people travelling steerage, or working their way for passage or second class passengers, were considered immigrants. In addition, the Act designated the immigrant class as anyone who might be prohibited from entering Canada. This designation included people with criminal records, the poor, physical and mental defectives, as well as people who did not belong to any of these groups but were included simply because they did not have the financial means to purchase first class passage (Statutes of Canada, July 1906).

In reference to ethical decision-making and the permission to allow people with disabilities to immigrate to Canada, it is quite evident that Canada's immigration legislation has been quite biased since the early 20th Century. The Immigration Act of 1906, for example, reflected the class bias of Canadian society during the early 20th Century and "immigrant class" designation was highly stigmatized. In summary, it appears that wealthy individuals and families moving to Canada from Britain and/or Europe were not identified as immigrants. Therefore, if a disabled individual and his/her family held first class passage, then it was very likely that the individual would not have been investigated. Thus, the individual did not appear on the statistics as being disabled nor, according to the definition of immigrant, did the person appear on the ship's manifest as an immigrant. Hence, it is very likely that disabled individuals from wealthy families were not reported to the Medical Superintendent and they entered Canada without any form of investigation.

1910: An Act Respecting Immigration

An Act Respecting Immigration (1910) upheld the same ideals as earlier immigration legislation but this legislation was more forthright in stipulating which populations might be denied permission to immigrate to Canada. For the first time, the concept of the "Prohibited Classes" was stated in reference to the following populations:

No immigrant, passenger, or other person, unless he is a Canadian citizen, or has Canadian domicile shall be permitted to land in Canada, or in the case of having landed in or entered Canada shall be permitted to remain therein, who belongs to any of the following classes, hereafter referred to as the "prohibited classes" - idiots, imbeciles, feeble-minded persons, epileptics, insane persons and persons who have been insane within the five years previous; persons afflicted with any loathsome disease, or with a disease which is contagious or infectious, or which may become dangerous to the public health, whether such persons intend to settle in Canada or only to pass through Canada in transit to some other country: Provided that if such a disease is curable within a reasonably short time, such persons may, subject to the regulations in that behalf, if any, be permitted to remain on board ship if hospital facilities do not exist on shore, or leave the ship for medical treatment. Immigrants who are dumb, blind, or otherwise physically defective, unless in the opinion of a Board of Inquiry or officer acting as such they have sufficient money, or have such profession, occupation trade, employment or other legitimate mode of earning a living that they are not liable to become a public charge or unless they belong to a family accompanying them or already in Canada which gives security satisfactory to the Minister against such immigrants becoming a public charge. (Statutes of Canada, 1910, p. 208-209)

The 1910 Immigration Act built upon previous immigration legislation and stressed many of the same points which were instituted in the Immigration legislation of 1869 and 1906. Similar to this previous immigration legislation, The 1910 Act remained concerned about the spread of contagious diseases and, like previous legislation, the Act addressed social dependence. A major shift in legislation is evidenced in the demarcation between the categories of physical and mental defectives as well as people who were sick with a communicable illness.

Mental defectives and people sick with a communicable disease were prohibited from entering Canada while physical defectives were granted some leniency. For example, the legislation suggested that, if physical defectives had a trade or they were able to make a living and they were travelling with their family or they could be financially supported by their family, then they would be accepted into the country.

...they have sufficient money, have such profession, occupation, trade, employment, or other legitimate mode of earning a living that they are not likely to become a public charge or unless they belong to a family accompanying them or already in Canada, and which gives security satisfactory to the minister against such immigrants becoming a public charge. (Statutes of Canada, 1910, p. 11)

As noted in the 1910 Immigration Act, people with disabilities were granted permission to enter Canada as long as certain criteria were met. Hence, to argue that Canada's Immigration laws have historically denied access to disabled individuals would be incorrect. The historical record shows there were restrictions but the record also indicates that allowances were made. And these allowances were made with the belief that individuals, no matter their status, would be able to provide for themselves. If people were unable to care for themselves, then family members were expected to take on this responsibility. In this regard, we can see that concerns pertaining to "excessive demand" or, in the vernacular of the day, "social dependence," were central to all of Canada's early immigration laws. But to state, as some authors have, that Canada's immigration laws have always denied access to people with disabilities is incorrect.

1927: An Act Respecting Immigration

The Immigration Act found in the 1927 Revised Statutes of Canada indicates major revisions to the Act since 1910. People with disabilities remained as part of the prohibited class in the 1927 Statute, but the prohibited class category represented a significant shift in ideology toward people with disabilities. Concerns about public health, contagious disease and social dependence remained but the Act linked "physical and mental defect" to concerns about criminal and anti-social behaviour and this is evidenced in the re-categorization of the "prohibited class." For example, mental defectives, the psychopathic inferior, diseased persons, physical defectives and illiterates, were put into the prohibited class along with prostitutes, pimps, alcoholics, beggars, vagrants, spies, conspirators, people advocating the overthrow of government and, last but not least, criminals (Federal Statutes of Canada, 1927).

The linkage between physical and mental impairment to criminal and anti-social behaviour in immigration legislation was indicative of the public and professional attitude toward people with disabilities during the early 20th Century. Sullivan and Snortum (1925) argued, "the gist of all seems to be contained in the two ideas that the disabled person is an economic incompetent, therefore, a burden to society and that the possession of a crooked or abnormal body means the possession of a crooked or abnormal mind." This was Font/Pitch 1,10 - Off. This was Font/Pitch 2,10 - On.. This was Font/Pitch 2,10 - Off. This was Font/Pitch 1,10 - On. It was believed that cripples, "as they grow acquire what has been called a 'mental warp' which is in the highest degree detrimental to their development and progress" This was Font/Pitch 1,10 - Off. This was Font/Pitch 2,10 - On. (Presidential Address, July 1914, p. 3). And Dr. Charles Jaegar (1914), a noted orthopaedic surgeon of early 20th Century America, alluded to character of people with orthopaedic disabilities, "in his idle hours he seeks solace and companionship in the saloon" (p. 68). This was Font/Pitch 1,10 - Off. This was Font/Pitch 2,10 - On. (9)

Despite the relegation to the prohibited class, examination of the 1927 Immigration Act reveals that leniency was still granted to some categories of defectives, depending on whether or not they were classified as physical defectives or as mental defectives. It appears that

no allowances were made for mental defectives, including “idiots, imbeciles, feeble-minded persons, epileptics, insane persons, and persons who were insane any time previously,” as well as “persons afflicted with tuberculosis in any form or with any loathsome disease, or with a disease which is contagious or infectious, or which may become dangerous to the public health...” (Revised Statutes of Canada, 1927, p. 11). But, allowance was made for “immigrants who were dumb, blind, or otherwise physically defective” (Revised Statutes of Canada, 1927, p. 11). Similar to previous legislation, the primary concern identified in this legislation had to do with social dependence. The legislation stated that physical defectives had to have money, a trade or profession, guaranteed employment, or family (financial) security. If these criteria were met, then the individual could be granted permission to enter Canada (Revised Statutes of Canada, 1927). The Act states the following:

..they have sufficient money, have such profession, occupation, trade, employment, or other legitimate mode of earning a living that they are not likely to become a public charge or unless they belong to a family accompanying them or already in Canada, and which gives security satisfactory to the minister against such immigrants becoming a public charge. (p. 11)

In addition to making allowances for some of the defective classes, the 1927 legislation also made allowances for people who were classified as illiterate. If it was determined that the individual was illiterate in English, French or the dialect for which he/she was being tested, the legislation indicated that the individual could enter Canada if he or she had a family member who could read or write and was admissible or was already a citizen. For example, the 1927 Immigration Act states that an admissible person or citizen could “bring in or send for his father, grandfather, his wife, his mother, his grandmother, or his unmarried or widowed daughter, if otherwise admissible, whether or not such a relative can read or not such relative shall be permitted to enter” (Revised Statutes of Canada, 1927, p.13).

As noted in the 1927 Immigration Act as well as previous Immigration Acts, physical defectives were granted permission to enter Canada as long as certain criteria were met. Hence, to argue that Canada's Immigration laws have historically denied access to disabled individuals would be incorrect. The historical record shows there were restrictions but the record also indicates that allowances were made. And these allowances were made with the belief that the individual, no matter what his or her status, would be able to provide for him/herself. If people were unable to care for themselves then family members were expected to take on this responsibility. It appears that federal, provincial and municipal politicians as well as the general public did not wish to implement and support programs aimed at providing wide-spread assistance for those who were unable to provide for themselves and/or their families. In this regard, we can see that concerns pertaining to "excessive demand" or social dependence were central to all of Canada's early immigration laws.

1947: An Act Respecting Citizenship, Nationality, Naturalization and the Status of Aliens

The historical examination of Canadian immigration reveals that immigration policy between the 1860s and the 1960s was not a major concern of most political parties and federal governments. For the most part, immigration fell under the domain of ministries such as agriculture, mines and resources, or labour. Moreover, there were few significant changes to immigration legislation until the post-World War Two era. And, the few major changes that are evidenced in Canada's first immigration legislation in the post-World War Two era did not update sections pertaining to people with disabilities. Sections of the immigration act pertaining to the people with disabilities included the same components introduced in the amendments of the 1910 immigration act.

The government of Canada introduced immigration legislation in 1947 which, in historical terms, is quite significant. An Act Respecting Citizenship, Nationality, Naturalization and the Status of Aliens established, for the first time, Canada's right to control immigration

legislation. Prior to 1947, the House of Parliament in Great Britain had the final say over Canada's immigration legislation and, until that time, Canadian citizens were considered British subjects.

Another important component of the Act Respecting Citizenship, Nationality, Naturalization and the Status of Aliens was the repeal of the Chinese Immigration Act of 1928. This amendment to the immigration act represented Canada's first attempt at addressing a long history of racism, but no similar amendments were made to address "ableism." While politicians were concerned about ending overtly racist immigration legislation, they were not concerned about other forms of discrimination. In fact, some politicians argued that it was justifiable to differentiate between different groups when it came to immigration. Prime Minister McKenzie King indicated that Canada had the right to choose who should be granted citizenship and who should be denied citizenship.

With regard to the selection of immigrants much has been said about discrimination. I wish to make it quite clear that Canada is in her rights in selecting whom we regard as desirable future citizens. It is not a fundamental human right to enter Canada. It is a privilege. It is a matter of domestic legislation. Immigration is subject to the control of the Parliament of Canada. (Dominion of Canada Official Report of Debates of House of Commons, 1947, Vol. III, p. 2646)

One can assume that people with disabilities were not considered to be "desirable future citizens." Further evidence regarding discriminatory policies toward people with disabilities can be found in Parliamentary debates of the time. For example, MP Winkler posed the following question to Hon. James Allison Glen, Minister of Mines and Resources; "Is consideration being given by the government to cases where entire families are desirous of migrating to Canada, and where due to war injury one member of the family is not physically fit to qualify for admission to Canada and to make provisions that when guarantees or bonds are furnished to Canada that such disabled person will never

become a public charge, then such disabled person may proceed to Canada with other members of the family." Minister Glenn responded, accordingly, "...no immigrant, passenger, or other person....shall be permitted to enter or land in Canada shall be permitted to remain therein who belongs to any of the following classes, hereafter referred to the "prohibited classes."

Immigrants who are dumb, blind or otherwise physically defective, unless in the opinion of the Board of Inquiry or officer acting as such they have sufficient money, or have such profession, occupation, trade, employment or other legitimate mode of earning a living that they are not liable to become a public charge or unless they have a family accompanying them or already in Canada and which gives security satisfactory to the minister against such immigrants becoming a public charge.

(Dominion of Canada Official Report of the Debates House of Commons, 1947, Vol. III, p. 464)

As far as people with disabilities were concerned, there was no significant change in the immigration legislation; and concerns regarding sufficient funds, the ability to care for oneself and one's family, or the ability to be cared for by one's family, which can be traced to immigration legislation of 1848 and 1869, remained part of the 1947 Immigration Act. Moreover, the references to the prohibited classes initiated in the 1910 Immigration Act continued to influence immigration legislation up to and well beyond 1947. As Prime Minister MacKenzie King stated, "Canada is in her rights in selecting whom we regard as desirable future citizens" (*Dominion of Canada Official Report of the Debates House of Commons, 1947, Vol. III, p. 2646*). It is important to note that, while the Canadian government finally took control over immigration in 1947 and set into motion immigration legislation intended to redress a long history of discrimination, the government did not see it necessary to reform immigration legislation which impacted on people with disabilities. Instead, the federal government maintained the Prohibited

Class clause which, in many ways, guided immigration practices toward people with disabilities until the present day.

1952: An Act Respecting Immigration

While the 1947 Citizenship and Immigration Act was significant for ending long-held discriminatory immigration practices toward Chinese people and helped Canada gain control of immigration from Britain, the 1952 Immigration Act represented the first significant amendment of immigration legislation since 1910. But, despite the significant changes to immigration legislation noted in the Immigration Act of 1952, there is little difference between the 1910 Immigration Act and the 1952 Immigration Act regarding the admissibility of people with disabilities. For example, Section 5 of the 1952 Immigration Act makes reference to the Prohibited Classes and states the following:

- (a) persons who are idiots, imbeciles, morons, are insane or, if immigrants, have been insane at any time, have constitutional psychopathic personalities, or if immigrants, are afflicted with epilepsy.
- (b) persons afflicted with tuberculosis in any form, trachoma or any contagious or infectious disease or with any disease that may become dangerous to the public health, but, if such disease is one that is curable within a reasonably short time, the afflicted person may be allowed, subject to any regulations that may be made in that behalf, to come to Canada for treatment.
- (c) Immigrants who are dumb, blind or otherwise physically defective unless
 - (i) they have sufficient means of support or such profession, trade, occupation, employment, or other legitimate mode of earning a living that they are not likely to become public charges, or

(ii) they are members of a family accompanying them or already in Canada and the family gives satisfactory security against such immigrants becoming public charges.

Additional aspects of the Immigration Act which denied access to people with disabilities included Subsection “s” Section 5 which indicated the following:

(s) persons, not included in any other prohibited class who are certified by the medical officer as being mentally or physically abnormal to such a degree as to impair seriously their ability to make a living.

(Acts of the Parliament of Canada, 1952, Sixth Session of the Twenty-First Parliament, Chapter 42, Section 5, p. 238-241)

As far as people with disabilities were concerned, the 1952 Immigration Act did not diverge from the prohibited class lineage established in 1910, which was based on protocols established as early as 1869. Justifiable concerns for public health and safety were expressed but, in addition, there remained the age-old concerns pertaining to social dependence as well as age-old stigmatization of people with disabilities as noncontributing citizens.

1966: *White Paper on Immigration*

The period between the early 1960s and late 1970s is considered one of the most progressive eras in Canadian social history as it was during this era that national medical care, bilingualism/biculturalism, as well as the Canada Pension Plan, came into existence. During the 1960s, the federal government of Canada carried out a major study into immigration. The 1966 White Paper on Immigration represented one of Canada’s most detailed explorations of immigration legislation from the late 1860s up to the late 1960s. The 1966 White Paper on Immigration made numerous suggestions to reform immigration legislation, and a vast array of topics, including economic factors; migrant patterns and supply; selection and sponsorship processes; cultural and social factors; humanitarian aspects,

international implications; deportation and appeals, ministerial discretion, security screening, as well as admissible classes and prohibited classes, were examined (White Paper, 1966). Many of the findings of this study were introduced as part of the 1967 Immigration Act, which is noted for the introduction of a point system for evaluating immigrant requests.

Fifty-six years had passed since the codification of the prohibited classes in 1910. Canada had been through two world wars, the Great Depression, the development of the modern welfare state and the introduction of publically-funded medical care. In many areas the White Paper on Immigration could be viewed as being quite progressive, but for people with disabilities the 1966 White Paper perpetuated the same old myths about people with disabilities and reapplied language from the earlier legislation. People with disabilities were still included in the prohibited class along with criminals, drug dealers, prostitutes, as well as “members of subversive organizations, spies, saboteurs, and a variety of morally or socially undesirable persons, including public charges” (p. 24).

The White Paper acknowledged significant developments in medical care and the study recognized that markers, which had been introduced to relegate individuals to the prohibited classes since 1910, had to be changed as these categorizations did not adequately reflect scientific and medical advances of the time. The White Paper reported that people should not be relegated to the Prohibited classes based on strict interpretations of physical and or mental defect alone. The White Paper suggested, for example, that people should not be prohibited from immigrating when the impairment or disease had been brought under control, “...an illness that has been cured or brought under control, to the point where no danger to public health or safety exists, should not be a bar to either temporary or permanent admission. Nor should mental or physical defectives be excluded for that reason alone, but only if they represent a danger to society or are not assured of private care” (p. 25).

Notwithstanding some liberalization of legislation in areas of discretionary powers for medical officers, the prohibited category

remained relatively unchanged and people with disabilities continued to be relegated to this category. Section 63 of the White Paper asserted the following:

In summary, without going into legal detail, the Government's general intention is that the following should be prohibited from admission to Canada as immigrants:

- (a) Persons suffering from disease, mental or physical, which constitutes a danger to the public health or safety;
- (b) A mentally or physically defective person unless he is a member of a family otherwise admissible and well able to look after him;
- (c) Convicted and self-confessed criminals, associates of criminals, or fugitives from justice;
- (d) Drug traffickers and drug addicts;
- (e) Subversives, spies, saboteurs;
- (f) Prostitutes, procurers, pimps, professional gamblers; confidence men; and habitual public charges;
- (g) Persons attempting to circumvent immigration procedures, seeking unlawful or unauthorized employment, or giving false or misleading information about themselves or their intentions;
- (h) Seamen who have deserted their ships. (p. 26-27)

In summary, the White Paper recommended flexibility wherein some disabled individuals could be removed from the prohibited classes and granted permission to immigrate. Increased flexibility recognized the importance of scientific and medical changes that were not included in previous immigration legislation. For example, whereas earlier immigration had denied access because of physical and mental defect alone, the White Paper recommended that, if improvement in health status had been secured and the person was not a threat, then he or she should be admitted. Section 58 of the White Paper proposed the following: "Persons actually insane or suffering from contagious or infectious diseases ought not to be admitted as immigrants or non-immigrants, unless they are coming to Canada by previous arrangement and under proper safeguards take treatment. However, an illness that

has been cured or brought under control, to the point where no danger to the public health or safety exists, should not be a bar to either temporary or permanent admission. Nor should mental or physical defectives be excluded for that reason alone, but only if they represent a danger to society or are not assured private care" (p. 24-25). Despite these recommendations, flexibility was often influenced by the medical officer of health and thus flexibility and discretionary powers were quite subjective. In effect, the medical officers of health controlled access to admission into Canada and people with disabilities were at their mercy. The language describing the prohibited classes indicates that very little changed from previous legislation and, like previous prohibited class designations, people with disabilities remained in the same category with criminals, prostitutes, subversives, drug addicts and pimps, as well as vagrants and beggars. In fact, people with disabilities represented four of the 20 classifications of populations of the prohibited classes.

1967: Amendment to the Immigration Act

Following the Canadian government's investigation into immigration in the 1966 White Paper, the government of Canada amended the Immigration Act in 1967 and introduced a "point system." The point system instituted a program which established the parameters for selecting the most desirable of immigrants. Each individual applying for immigration was evaluated according to a point schema and immigrants who achieved the required number of points were considered for immigration. In short, applicants with a high level of points were given a high priority and applicants with a low level of points were given a low priority. As part of the 1967 Immigration Act, all potential immigrants had to meet certain criteria:

Knew one or the other of Canada's official languages (English or French).

The applicant was of employable age.

The applicant had employment already arranged.

The applicant had family already living in Canada.

The applicant had a formal education, training and/or trade.

The applicant was intending on living in an area of Canada with high employment potential. (Canada in the Making, p. 8)

Interestingly, the point system did not and does not apply to people with disabilities and, even if a disabled individual met all of the above criteria, the individual could be denied permission to immigrate to Canada. From an ethical standpoint, it is quite evident that, during this era of widespread liberalization of immigration legislation, these radical and progressive changes were not intended for people with disabilities. Similar to previous legislation, the 1967 Immigration Act was rooted in ableism. For example, while the White Paper suggests that impairment alone should not be a deciding factor in permission to immigrate to Canada, people with disabilities remained within the Prohibited Class designation. The long-held concern of social dependence remained as a major obstacle for people with disabilities and it appears that people with disabilities were continuously evaluated for what they might not be able to do and not what they could do. In this regard, immigration legislation was based on economic "utilitarianism" and people with disabilities ranked very low when considering their abilities in terms of economic productivity.

1975 Green Paper: A Report of the Canadian Immigration and Population Study

In 1974, the federal government of Canada began to debate and review immigration regulations but it was not until 1976 that the Immigration Act was amended, and many of the amendments of the Immigration Act were based on findings from the 1975 "Green Paper" on immigration, known as *A Report of the Canadian Immigration and Population Study*. Although the 1975 Green Paper was recognized at the time for its liberalization of immigration laws -- especially as the laws pertained to the immigration of refugees, family reunification, sponsorship of family members and the development of services for new immigrants, there was no liberalization of laws for people with disabilities. Indeed, the Green Paper had a section entitled the "Prohibited Classes" and, similar to previous immigration legislation, people with disabilities were once again relegated to this category. Reference to people with disabilities

included "impairment to the individual's health that poses a possible threat to Canadians' health or involves the individual's inability to look after himself in Canada." And, a second component which related to people with disabilities included the "possibility of the individual becoming an economic burden on Canada" (Green Paper, p.147).

The concern regarding contagious disease as well as social dependency remained, but some leniency toward some health stipulations can be found in the Green Paper. The Green Paper, for example, recommended the removal of people with epilepsy from the prohibited class as medical improvements provided for mechanisms for controlling epilepsy. "Thus the absolute bar against immigrants with epilepsy is outdated now that epilepsy can easily be controlled by medication" (p. 148). However, regulations to control and render other populations of people with disabilities as inadmissible remained unchanged.

1976: An Act Respecting Immigration to Canada

The Immigration Act of 1976, *An Act Respecting Immigration to Canada*, was actually assented into law on August 5, 1977. Despite further liberalization of immigration regulations, potential immigrants with disabilities remained excluded. The "Prohibited Classes" category, which had been part of Canadian immigration legislation since 1910, was removed, but it was replaced by a no-less-offensive categorization -- "Inadmissible Classes." References such as physical defectives, mental defectives, idiots, imbeciles and lunatics were finally removed from the immigration terminology and people with epilepsy were no longer considered part of the Inadmissible Classes. Besides the change in language and the removal of people with epilepsy from the Inadmissible Classes, there were no recognizable long-term benefits for people with disabilities. And, like the Prohibited Classes categorizations on which the Inadmissible Classes categorization was built, people with disabilities were placed in the same category as social dependents, criminals, spies, and subversives. Basically, the language changed but the consequences of the legislation for people with disabilities and their families remained the same.

Section 19. (1) No person shall be granted admission who is a member of any of the following classes: persons who are suffering from any disease, disorder, disability, or other health impairment as a result of the nature, severity or probable duration of which in the opinion of a medical officer concurred by at least one other medical officer, they are likely to be a danger to public health or public safety, or their admission would cause or might reasonably be expected to cause excessive demands on health or social services; persons who there are reasonable grounds to believe will be unable or unwilling to support themselves and those persons who are dependent on them for care and support, except persons who have satisfied an immigration officer that adequate arrangements have been made for their care and support. (p. 1205)

It is important to note that it is in the 1976 Immigration Act where the origins of the “excessive demand clause” can be found. The 1976 Immigration Act did not categorically state that people with disabilities need not apply for immigration but the interpretation of the excessive demand clause made it impossible for people with disabilities and their families to immigrate to Canada.

2001: An Act Respecting Immigration to Canada and the Granting of Refugee Protection to Persons who are Displaced, Persecuted or in Danger, otherwise known as The Immigration and Refugee Protection Act

In 2001, the Government of Canada amended the Immigration Act and it is this Act which guides immigration legislation to the present day. Enormous strides were made toward changing legislation which had historically discriminated against people because of age, race, religion, ethnicity and sexual orientation, and the legislation granted increased protection to refugees. The Immigrant and Refugee Protection Act has increased the potential for more immigrants to Canada but the legislation did not and does not improve the situation for potential

immigrants with disabilities. Indeed, as repugnant as terms such as physical defective, mental defective, idiot or lunatic are, and as restrictive as the prohibited classes were, it appears that the present Immigrant and Refugee Protection Act has increased rather than minimized restrictions on people with disabilities. For example, the discretionary powers of officers of health as well as other immigration officials evidenced in previous legislation, including the authority to allow people with disabilities into the country, have become nonexistent because of the reformed excessive demand clause of the Immigrant and Refugee Protection Act. "Excessive demand" means:

(a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required by these Regulations, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or (b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of the denial or delay in the provision of those services to Canadian citizens or permanent residents. (Statutes of Canada, 2001, p. 39)

The language of the excessive demand clause, which attests to concerns regarding excessive use of health and social services as well as concerns that over-use of services might increase waiting times for Canadian citizens, is consistently used by medical officers of health and other immigration officials to deny people with disabilities the opportunity to immigrate to Canada. Moreover, people with disabilities as well as their family members are still considered part of the inadmissible class of the Immigrant and Refugee Protection Act and relegation to this category further restricts opportunities for potential immigration (Statutes of Canada, 2001, Division Four Sections 34 to 41).

While contemporary immigration legislation does not directly state that people with disabilities should be excluded from immigrating to Canada as such, a statement which would openly deny access to potential immigrants would, in effect, go against Canada's human rights legislation which protects people with disabilities. Instead, permission to immigrate and to become a Canadian citizen is most often denied to people with disabilities because of the excessive demand and inadmissibility clauses. Indeed, the evidence suggests that most people with disabilities, who have been denied permission to remain in Canada or have been denied permission to immigrate to Canada, have been denied entry because of the excessive demand clause. The case of the Chapman family from Great Britain is indicative of examples where people have been denied permission to remain in Canada when it was discovered that a family member is disabled. The Headline for the British newspaper, *The Daily Mail*, August 9, 2008, states the following: "Emigrating British family turned away from Canada because their daughter,7,isdisabled" (<http://www.mailonsunday.co.uk>). The story details the plight of a British couple and their two children who bought a house and planned to start a business in Nova Scotia. While going through immigration proceedings at the Halifax Airport, the couple were informed that the family would not be able to stay in Canada because their daughter was diagnosed with Angelman's Syndrome (a developmental disability). Even though the child required no health services and there is no need for medication, the family was denied permission to remain in Canada because of the daughter's potential demand on health services. "Mrs. Chapman, 42, said she was asked, 'Why have you brought your daughter to this country?' 'I asked why I shouldn't and was told that because Lucy was disabled she had a lifetime ban. In 2008 a country as sophisticated as Canada was refusing my daughter entry because she is disabled'" (<http://www.mailonsunday.co.uk>). The parents argued that they had the financial means to care for their daughter and they had no intention of requesting assistance of any kind. Both were retired police officers and, in their planning to come to Nova Scotia, they had purchased a house and they were ready to start a business in Dartmouth. But, despite their financial status and despite their commitment not to rely on medical or

social services for their daughter, the couple and their two children were returned to Britain.

Adelkader Belaouni , an Algerian refugee with a visual impairment, was faced with deportation and he sought sanctuary in Saint Gabriel's Church in Montreal in January, 2006 (<http://www.soutienpourkader.net/en/index.php>). Mr. Belaoni was forced to remain in the church for over three years but, with the support of his family and friends, he was able to have his deportation order revoked this past year. Unfortunately, other people with disabilities, such as Chris Mason, were not able to have their deportation orders overturned and they were removed from Canada. Mr. Mason (36 years old) was living in Winnipeg, Manitoba and he became disabled as the result of a work-related injury and requires a wheel chair for mobility. Although Mr. Mason was impaired because of a work-related injury he sustained in Canada, at the time he was not a Canadian citizen and his request to remain in Canada was denied. "Mason was ordered deported to Great Britain after Canadian immigration officials determined that to grant the wheelchair-bound man permanent resident status would create an undue economic burden for taxpayers" (<http://www.cbc.ca>). Mr. Mason was forced to return to England and, at the time of his arrival in England, he had to move into a nursing home as there was no accessible accommodation for him (<http://www.cbc.ca>).

While potential immigrants such as the Chapman family and Chris Mason have been denied permission to live in Canada, other families such as the Hilewitz family from South Africa and the Dejong family, after lengthy court hearings, were granted permission to live in Canada. Both families had children with intellectual disabilities and when the families applied for immigration they were denied permission to immigrate to Canada. The medical officers of health who evaluated the immigration requests of these families denied them entry into Canada. The decisions were based on the contention that, in both cases, the child's intellectual impairment would create an excessive demand on health and social services. However, in both cases the parents argued that they had the financial means to provide care for their child and they had no intention to request assistance from government programs. The

Supreme Court of Canada ruled in the families' favour and permission to immigrate to Canada was granted. The judges ruling in favour of the families indicated that, notwithstanding the excessive demand stipulation of the immigration act, each case should be evaluated on its individual merit.

Section 19(1)(a)(ii) calls for an assessment of whether an applicant's health would cause, or might reasonably be expected to cause excessive demands on Canada's social services. The term "excessive demands" is inherently evaluative and comparative, and shows that medical officers must assess likely demands on social services, not mere eligibility for them. Since, without consideration of an applicant's ability and intention to pay for social services, it is impossible to determine realistically what "demands" will be made, medical officers must necessarily take into account both medical and non-medical factors. This requires individualized assessments. If medical officers consider the need for potential services based only on the classification of the impairment rather than on its particular manifestation, the assessment becomes generic rather than individual. It is an approach which attaches a cost assessment to the disability rather than to the individual. The clear legislative threshold is reasonable probability, not remote possibility. It should be more likely than not, based on a family's circumstances, that the contingencies will materialize. (*Hilewitz v. Canada*; *De Jong v. Canada*, 2005 SCC 57, [2005] 2 S.C.R. 706)

And, since the parents had the financial means to care for dependents and were willing to do so, then the families should be allowed to immigrate.

Accordingly, H and J's ability and willingness to attenuate the burden on the public purse that would otherwise be created by their intellectually disabled

children are relevant factors in determining whether those children would reasonably be expected to cause excessive demands on Canada's social services. Given their financial resources, H and J would likely be required to contribute substantially, if not entirely, to any costs for social services provided by the province of Ontario, where they wish to settle. The fears articulated in the rejections of the applications, such as possible bankruptcy, mobility, school closure or parental death, represent contingencies that could be raised in relation to any applicant. Using such contingencies to negate a family's genuine ability and willingness to absorb some of the burdens created by a child's disabilities anchors an applicant's admissibility to conjecture, not reality. In both cases, the visa officers erred by confirming the medical officers' refusal to account for the potential impact of the families' willingness to assist. (Hilewitz v. Canada; De Jong v. Canada, 2005 SCC 57, [2005] 2 S.C.R. 706)

It is important to note that there were dissenting opinions provided by some of the Supreme Court Justices, who concluded that it was not up to medical officers of health to determine a family's ability to provide for a dependent. They further concluded that meeting immigration standards should not be based on a family's wealth.

If Parliament had wanted to direct medical officers to consider family support or wealth, it had ample opportunity to do so when revising the rules in 1976. The subsequent statute, regulations and internal guidelines all point to the applicant's medical condition alone and not to his or her wealth. Moreover, the fact that Parliament expressly considered whether family support was relevant to excessive demands assessments and chose not to include it in the *Immigration Act* and the regulations strongly suggests that Parliament did not intend wealth to be a relevant factor. (Hilewitz v.

Canada; *De Jong v. Canada*, 2005 SCC 57, [2005] 2 S.C.R. 706)

In the final analysis, while the Supreme decision may have helped the Dejong and the Hilewitz families, the decision does not necessarily address the needs of other families with disabled members or individuals with disabilities wishing to immigrate to Canada. The Immigration and Refugee Protection Act with its “excessive demand” clause still guides Canada’s immigration policies and practices. Up to this point in time the law has not changed and, in most cases, decisions allowing immigrants with disabilities to remain in Canada have been made through a ministerial permit.

Conclusion

Canadian immigration legislation from the mid-19th Century to the present day has consistently labeled people with disabilities as non-desirable. Immigration legislation has long been rooted in discriminatory practices toward people with disabilities and the dominant social construct of disability as a negative deviation from the so-called ability “norm” has prevailed. In terms of Canadian immigration legislation, people with disabilities have been and continue to be viewed as helpless victims, as burdens on one’s family, as extraordinary costs to the state and, depending on the impairment, people with disabilities have been considered possible threats to public safety and or public health. These constructs of immigrants with disabilities are well represented in the ideology underpinning the “prohibited, inadmissible and excessive demand” categories of immigration legislation. The term “prohibited” is synonymous with forbidden, banned, and barred. Inadmissible can easily be replaced by terms such as not permitted, unacceptable, not allowed, and excessive demand can be used to describe the extreme, the unwarranted, or too much, or disproportionate. Fundamentally, there has never been anything in Canadian immigration legislation that has placed value on people with disabilities. Not only does Canadian immigration legislation imply that people with disabilities have nothing positive to offer Canada, but the legislation implies that people with

disabilities are more likely to take from or be a burden to existing services.

Immigration legislation as it pertains to people with disabilities has not kept pace with the legislative changes made for other minority populations. Historically, Canadian immigration legislation has been shamefully racist, sexist and homophobic and, while it no longer discriminates against people because of race, religion, ethnicity, culture, gender or sexual orientation, contemporary immigration remains inherently ableist and restricts the immigration possibilities of people with disabilities. Moreover, while Canadian immigration legislation is quick to celebrate diversity, no such celebration is offered to potential immigrants with disabilities. For all intents and purposes, people with disabilities are viewed as being of less value than non-disabled people and disability is viewed as something negative.

As far as people with disabilities are concerned, not much has changed over the past 140 years. Albeit the language may be somewhat more palatable as legislators no longer use terms such as idiots, imbeciles, the dumb, the physically defective or the mentally defective to describe people with disabilities, change in language without change in action has had little effect on ending discriminatory legislation toward people with disabilities as potential immigrants and citizens. Canada has done away with immigration legislation that was ethnically centered, was racist and was homophobic but Canada still upholds immigration laws that are ableist. The present day Immigration and Refugee Protection Act, with its references to the inadmissible classes and its concerns for excessive demand, still reinforces the image of people with disabilities as a dependent population and the age-old practice of restriction and prohibition continues.

This paper's brief historical overview of immigration legislation has provided some insight into the plight of people with disabilities and their desires to become Canadian citizens. In the introduction, a few questions pertaining to ethical decision-making and ethical practice regarding immigration were raised: Is it ethical to deny citizenship to people with disabilities based on policies which were created over 140

years ago? Is it ethical to institute human rights reforms to immigration legislation yet leave people with disabilities uncovered? Is it ethical for policy makers to create legislation which puts undue hardships on families and loved ones? Is it ethical to make decisions about the value of individuals based solely on their level of impairment? Is it ethical to maintain legislation which perpetuates stereotypes and fails to recognize the value of all people? It is hoped that the reader's response to these questions is a resounding "No" and, hopefully, some day in the very near future there will be a removal of immigration barriers for people with disabilities.

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